REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BASF PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6283

COMMISSIONER OF INTERNAL REVENUE
Respondent.

Promulgated:

FEB 10 2004

x - x

DECISION

This is a judicial claim for the issuance a tax credit certificate in the amount of P18,485,424.12 allegedly representing unutilized input value-added tax (VAT) paid on the importation and/or local purchase of capital goods and/or services for the four taxable quarters of 1999.

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office and business address at Road 5, Phase 1 GIZ, Carmelray Industrial Park I, 4028 Canlubang, Laguna (*par. 1, Joint Stipulation of Facts*). It is registered with the Bureau of Internal Revenue as a VAT entity engaged in the manufacture of chemical products (*Exhibit A*).

For the four taxable quarters of 1999, petitioner seasonably filed its VAT returns declaring the following:

Exh	1999	Output VAT	INPUT VAT			
				This Quarter		
			Carried-over from previous qtr	Domestic Purchases	Importation	Excess
		(a)	(b)	(c)	(d)	(b) + (c) + (d) – (a)
D	1st qtr	P11,366,567.20	P 32,673,163.21	P 4,766,231.57	P 5,830,555.00	P 31,903,382.58
G	2nd qtr	5,096,532.21	31,903,382.58	5,548,236.39	10,032,669.00	42,387,755.76
J	3rd qtr	5,139,553.39	43,048,461.94	5,358,886.22	11,136,438.90	54,404,233.67
M	4th qtr	6,257,651.92	54,404,233.67	2,884,574.09	6,968,014.00	57,999,169.84
		P27,860,304.72		P 18,557,928.27	P 33,967,676.90	

After determining that some of its excess input VAT payments for the year 1999 pertained to capital goods such as the purchase of machinery and construction of its plant and office building, petitioner, on March 27, 2001, filed with the Bureau of Internal Revenue, the corresponding application for refund/tax credit in the amount of P18,485,424.12 (*page 16, TSN, March 6, 2002; Exhibits N to N-4*).

As the two-year prescriptive period for filing a judicial claim was about to lapse, petitioner filed the instant Petition for Review with this court on April 19, 2001.

Respondent, in his Answer filed on June 4, 2001, interposed by way of Special and Affirmative Defenses the following:

> "5. Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;
>
> 6. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;
>
> 8. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund, and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

9. Moreover, petitioner must show compliance with the provisions of Section 204(C) and 229 of the Tax Code, as amended;

10. Let it be stressed that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the person or entity claiming the exemption. (Asiatic Petroleum Co. v. Llanes, 49 Phil. 466; Northern Phil. Tobacco Corp. v. Mun. of Agoo, La Union, 31 SCRA 304; Reagan v. Commissioner, 30 SCRA 968; Austrias Sugar Central, Inc. v. Commissioner of Customs, 29 SCRA 617) and liberally in favor of the government."

In their Joint Stipulation of Facts filed on October 15, 2001 and approved by this court on October 24, 2001, the parties submitted the following issues for resolution:

1. Whether or not petitioner's capital goods are used in VAT taxable business pursuant to Section 4.106-1 of Revenue Regulation No. 7-95;

2. Whether or not petitioner has unutilized input VAT in the amount of P18,485,424.12 for the taxable year 1999 pertaining to its importation and/or locally purchased capital goods which are related to its business;

3. Whether or not petitioner's unutilized input VAT in the amount of P18,485,424.12 is substantiated by documentary evidence;

4. Whether or not the unutilized input VAT of petitioner in the amount of P18,485,424.12 was carried over to the succeeding quarter and applied against any of petitioner's output VAT for the same period; and

5. Whether or not petitioner is entitled to the issuance of tax credits in the amount of P18,485,424.12.

To support its claim, petitioner presented testimonial and documentary evidence. Respondent, on the other hand, submitted his case for decision without presenting any controverting evidence (*page 1,304, CTA records*). He even failed to file his memorandum.

Anent the issue of whether or not petitioner is entitled to the issuance of a tax credit certificate in the amount of P18,485,424.12 representing unutilized input VAT paid on the importation and/or local purchase of capital goods for the taxable year 1999, Section 112(B) of the Tax Code provides as follows:

> **"Sec. 112.** ***Refunds or Tax Credits of Input Tax.* – x x x**
>
> **"(B)** ***Capital goods***. — A VAT-registered person may apply for the issuance of a tax credit certificate or refund of input taxes paid on capital goods imported or locally purchased, to the extent that such input taxes have not been applied against output taxes. The application may be made only within two (2) years after the close of the taxable quarter when the importation or purchase was made.

Relative thereto, Sections 4.106-1 and 4.104-5 of Revenue Regulations No. 7-95 state thus:

> **"SEC. 4.106-1.** ***Refunds or tax credits of input tax.*** — (a) xxx
>
> (b) ***Capital Goods.*** — x x x
>
> "*Capital goods or properties*" refer to goods or properties with estimated useful life greater than one year and which are treated as depreciable assets under Section 29 (f), used directly or indirectly in the production or sale of taxable goods or services.
>
> **"SEC. 4.104-5. Substantiation of claims for input tax credit**. — (a) Input taxes shall be allowed only if the domestic purchase of goods, properties or services is made in the course of trade or business. The input tax should be supported by an invoice or receipt showing the information as required under Section 108 (a) and 238 of the Code. Input tax on purchases of real property should be supported by a copy of the public instrument i.e. deed of absolute sale, deed of conditional sale, contract/agreement to sell, etc., together with the VAT receipt issued by the seller.
>
> xxx

(b) Input tax on importations shall be supported with the import entry or other equivalent document showing actual payment of VAT on the imported goods."

Plainly, from the above provisions, in order to be entitled to a refund/tax credit of input VAT paid on capital goods purchased, petitioner must prove that:

1) it is a VAT registered entity;
2) it paid input VAT on capital goods purchased;
3) its input VAT payments on capital goods are duly supported by VAT invoices and/or official receipts;
4) it did not offset or apply the claimed input VAT payments on capital goods against any output VAT liability; and
5) the claim for refund was filed within the two-year prescriptive period both in the administrative and judicial levels (***Telecommunications Technologies Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6018, November 24, 2003***).

The fact that petitioner is a VAT registered entity is not disputed (*Exhibit A; par. 3, Stipulation of Facts*).

As to the whether or not the claim for refund was filed within the two-year prescriptive period, we answer in the affirmative. The earliest quarter covered by the subject claim is the first quarter of 1999 for which petitioner filed its VAT return on April 26, 1999. Counting from this date, petitioner's claim for refund filed on March 27, 2001 in the administrative level and the Petition for Review filed on April 19, 2001 fall within the two-year prescriptive period (***Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5296, Resolution, July 20, 1998***).

With reference to the second and third requisites, it was verified by the commissioned auditing firm, C. L. Manabat & Co., that the input VAT payments relative to capital goods purchased by petitioner for the year 1999 which were adequately covered by or substantiated with the appropriate supporting documents amounted only to P13,624,801.45 (*page 6, Exhibit O*) out of the total claim of P18,485,424.12. However, this court found that the amount of P13,624,801.45 should be further reduced by the following input taxes of P270,067.57 paid on purchases which do not fall within the definition of capital goods under Section of 4.106-1(b) of Revenue Regulations No. 7-95, earlier quoted:

Exhibit	Nature of Purchase	Gross Amount	Disallowed Input VAT
JJ-2-11-58a to JJ-2-11-58c	elgitol N-10/caustic soda flakes	P 187,500.00	P 17,045.45
JJ-2-12-62a to JJ-2-12-62d	magnesium chloride	142,500.00	12,954.55
JJ-2-2-71	rental	1,254,000.00	78,758.11
JJ-2-7-33b	rental	733,150.00	46,045.86
JJ-2-8-38b	rental	713,790.00	44,829.94
JJ-2-9-46b	rental	713,790.00	44,829.94
JJ-2-6-26a, JJ-2-6-26b	security services	23,655.88	1,485.72
JJ-2-6-29a to JJ-2-6-29d	security services	56,610.00	3,555.42
JJ-2-6-30a to JJ-2-6-30e	security services	87,405.88	5,489.57
JJ-2-10-51a to JJ-2-10-51d	security services	100,155.88	6,290.34
JJ-2-10-57a to JJ-2-10-57d	security services	38,955.88	2,446.64
JJ-2-11-59a to JJ-2-11-59b	security services	100,883.33	6,336.03
			P 270,067.57

Likewise, the input taxes of P2,950,761.51 which were not duly supported by valid VAT invoices or machine validated Bureau of Customs Import Entry Declarations should be disallowed, details of which are as follows:

1) Locally Purchased Capital Goods without VAT invoices

Exhibit	Supplier	Gross Amount	Disallowed Input VAT
JJ-2-3-10a, JJ-2-3-10b	Siemen's, Inc.	P 300,030.18	P 27,275.47
JJ-2-4-13a	Spectrum Electronic Applications	1,355,936.05	123,266.91
JJ-2-5-21a, JJ-2-5-21b	KPI Elevators, Inc.	351,750.00	22,091.84
JJ-2-6-22a	Cancio Associates Inc.	317,089.50	28,826.32
JJ-2-6-23a, JJ-2-6-23b	Work + Space Solutions, Inc.	303,349.64	27,577.24

JJ-2-7-31a, JJ-2-7-31b	Icon Interiors, Inc.	136,850.22	12,440.93
JJ-2-9-42a, JJ-2-9-42b	KPI Elevators, Inc.	173,425.00	10,892.04
JJ-2-10-53a, JJ-2-10-53b	Scandia Designs, Inc.	162,825.00	14,802.27
JJ-2-10-55a, JJ-2-10-55b	Toyota Shaw, Inc.	635,000.00	39,881.50
JJ-2-10-56a to JJ-2-10-56c	Icon Interiors, Inc.	1,855,699.89	168,699.99
		sub-total:	P 475,754.51

2) *Imported Capital Goods without machine validated Bureau of Customs Import Entry Declarations*

Exhibit	Disallowed Input VAT
JJ-3-7-2a , JJ-3-7-2b	P 44,566.00
JJ-3-7-5a, JJ-3-7-5b	127,770.00
JJ-3-7-8a to JJ-3-7-8c	369,543.00
JJ-3-7-9a, JJ-3-7-9b	60,999.00
JJ-3-7-10a, JJ-3-7-10b	14,938.00
JJ-3-7-15a, JJ-3-7-15b	234,421.00
JJ-3-8-19a to JJ-3-8-19c	44,281.00
JJ-3-8-21a to JJ-3-8-21d	317,999.00
JJ-3-8-22a, JJ-3-8-22b	78,702.00
JJ-3-8-23a to JJ-3-8-23c	32,786.00
JJ-3-8-24a, JJ-3-8-24b	70,082.00
JJ-3-8-25a, JJ-3-8-25b	15,816.00
JJ-3-8-32a, JJ-3-8-32b	7,366.00
JJ-3-9-37a to JJ-3-9-37c	122,209.00
JJ-3-9-38a, JJ-3-9-38b	93,474.00
JJ-3-9-39a, JJ-3-9-39b	1,337.00
JJ-3-9-42a, JJ-3-9-42b	57,009.00
JJ-3-9-46a to JJ-3-9-46c	432,667.00
JJ-3-9-47a, JJ-3-9-47b	4,863.00
JJ-3-9-48a, JJ-3-9-48b	5,298.00
JJ-3-10-49a, JJ-3-10-49b	21,655.00
JJ-3-10-50a, JJ-3-10-50b	14,926.00
JJ-3-10-51a, JJ-3-10-51b	5,082.00
JJ-3-10-52a, JJ-3-10-52b	8,218.00
JJ-3-10-53a, JJ-3-10-53b	77,056.00
JJ-3-10-55a, JJ-3-10-55b	31,862.00
JJ-3-10-56a, JJ-3-10-56b	14,860.00
JJ-3-10-57a, JJ-3-10-57b	25,068.00
JJ-3-11-59a, JJ-3-11-59b	50,633.00
JJ-3-11-60a, JJ-3-11-60b	63,753.00
JJ-3-11-63a, JJ-3-11-63b	25,768.00
sub-total:	P 2,475,007.00
Total:	P 2,950,761.51

Prescinding from the aforesaid disallowances, only the claimed 1999 input VAT payments of P10,403,972.37 (P13,624,801.45 less P270,067.57 and P2,950,761.51) on capital goods were validly supported by VAT invoices/official receipts and BOC Import Entry Declarations.

We proceed to the fourth requisite.

In concluding that the petitioner has sufficient basis for claiming for a refund of the amount of P13,624,801.45 representing unutilized input VAT payments on capital goods for the year 1999, the commissioned auditing firm, C. L. Manabat & Co., in its report dated May 13, 2002, summarized petitioner's verified output and input VAT transactions as follows (*page 8, Exhibit O*):

BASF Philippines, Inc.
Correlation of Verified VAT Amounts
For the Year 1999

Table VIII

	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**Annual**
Adjusted Output VAT	(11,366,567.20)	(7,981,537.40)	(5,437,741.27)	(6,388,313.15)	(31,174,159.02)
(Table III)					
VAT Carry Over	23,356,010.73	16,110,835.25	12,854,780.09	12,512,695.61	23,356,010.73
Verified Input VAT					
Ordinary Purchase	4,121,391.72	4,725,482.24	5,095,656.79	5,624,080.20	19,566,610.95
(Table IV)					
VAT Credits/(Payable)	16,110,835.25	12,854,780.09	12,512,695.61	11,748,462.66	11,748,462.66
Verified Input VAT					
Capital Expenditures	1,639,793.21	2,755,014.20	7,435,482.24	1,794,511.80	13,624,801.45
(Table VI)					

According to C. L. Manabat & Co., the above summary indicates that the claimed amount of P13,624,801.45 remained unutilized because the input VAT carry-over from 1998 of P23,356,010.73 and verified input VAT from ordinary purchases of

P19,566,610.95 for 1999 in the sum of P42,922,621.68 were more than sufficient to cover petitioner's 1999 adjusted output VAT liability in the amount of P31,174,159.02. After offsetting the output VAT of P31,174,159.02 from the accumulated input VAT of P42,922,621.68, there still remains an input VAT credit of P11,748,462.66 that can be applied to the succeeding period.

However, this court noted that petitioner was not able to substantiate the input VAT carry-over of P23,356,010.73. No VAT invoices/receipts were presented to prove the existence of the said amount. In fact, the commissioned auditing firm merely lifted the said 1998 balance from petitioner's returns and presumed that it is adequately supported (*see item 1, page 2 of Exhibit O*). Without the corresponding VAT invoices/receipts, the input VAT carry-over from 1998 of P23,356,010.73 cannot be applied against petitioner's 1999 output VAT liability of P31,174,159.02.

Considering that the total verified input VAT credits of P29,970,583.32, representing the sum of the input VAT from ordinary purchases of P19,566,610.95 and input VAT from capital goods purchases of P10,403,972.37, are lower than the output VAT liability of P31,174,159.02, there is no excess or unutilized input VAT on capital goods purchases that may be the proper subject of a claim for refund/tax credit under Section 112(B) of the Tax Code, as shown below:

Adjusted Output VAT for 1999		P 31,174,159.02
Less: Verified Input VAT from		
Ordinary Purchases	P 19,566,610.95	
Capital Goods Purchases	10,403,972.37	29,970,583.32
Output VAT still payable		P 1,203,575.70

(1334)

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge